

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

O'NEIL BROWN,)
Petitioner,)
)
v.)
)
ATTORNEY GENERAL ERIC HOLDER,)
ET AL.,)
Respondents.)
)
)
C.A. No. 10-11304-NG

ORDER

GERTNER, D.J.

On July 28, 2010, O'Neil Brown ("Brown"), an immigration detainee at the Plymouth County Correctional Facility, filed a *pro se* § 2241 habeas petition naming Attorney General Eric Holder and DHS as the Respondents. Brown claims that his removal order was final more than six months ago but his removal is not reasonably foreseeable because no travel documents have been issued, although he cooperated in removal efforts. He asserts that he continues to be detained in violation of his right to due process, as articulated by the Supreme Court in Zadvydas v. Davis, 533 U.S. 678 (2001). He seeks release from custody on conditions of release.

Brown failed to pay the filing fee or to seek a waiver thereof.

Upon review of the record, it is hereby Ordered that:

1. Within 21 days of the date of this Order, Brown shall pay the \$5.00 filing fee for this action, or he shall file a Motion for Leave to Proceed *in forma pauperis* along with any inmate account statement. See 28 U.S.C. § 1914(a) (fees); 28 U.S.C. § 1915 (proceedings *in forma pauperis*).¹ The Clerk shall provide Brown with the standard application form. Failure to comply with this directive may result in a dismissal of this action;

¹Although Brown is not a "prisoner" as defined by 28 U.S.C. § 1915(h), in order to evaluate any *in forma pauperis* request, the Court requires credible information concerning the balance in any of Brown's accounts.

2. Brian Gillen, the Deputy Superintendent of the Plymouth County Correctional Facility, shall be substituted as the sole Respondent in this action. See Rumsfeld v. Padilla, 542 U.S. 426, 439 (2004) (immediate custodian of petitioner is proper respondent in habeas action);
3. The Clerk of this Court shall serve a copy of the petition upon (i) Brian Gillen, Deputy Superintendent, Plymouth County Correctional Facility, 26 Long Pond Road, Plymouth, MA 02360; and (ii) the United States Attorney for the District of Massachusetts;
4. The Respondent shall, within 21 days of receipt of this Order, file an answer or other responsive pleading; and
5. The respondent shall provide the Court with at least 48 hours advance notice of any scheduled removal of Petitioner, and any scheduled transfer of the Petitioner out of the jurisdiction.

SO ORDERED.

/s/ Nancy Gertner
UNITED STATES DISTRICT JUDGE

DATED: August 13, 2010